A/49/33

United Nations

Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

General Assembly
Official Records • Forty-ninth Session
Supplement No. 33 (A/49/33)

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United Nations · New York, 1994

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ISSN 0255-1276

[Original: Arabic/Chinese/English/
French/Russian/Spanish]

[7 April 1994]

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I. INTRODUCTION

1. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization was convened in accordance with General Assembly resolution 48/36 of 9 December 1993 and met at United Nations Headquarters from 7 to 25 March 1994.

2. In accordance with General Assembly resolutions 3349 (XXIX) of 17 December 1974 and 3499 (XXX) of 15 December 1975 and decision 45/311 of 28 November 1990, the Committee is composed of the following Member States: Algeria, Argentina, Barbados, Belgium, Brazil, China, Colombia, Congo, Cyprus, Czech Republic, Ecuador, Egypt, El Salvador, Finland, France, Germany, Ghana, Greece, Guyana, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Kenya, Liberia, Mexico, Nepal, New Zealand, Nigeria, Pakistan, Philippines, Poland, Romania, Russian Federation, Rwanda, Sierra Leone, Spain, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yugoslavia and Zambia. 1/

3. The session was opened by the Under-Secretary-General for Legal Affairs, the Legal Counsel, who represented the Secretary-General and made an introductory statement.

4. The Director of the Codification Division of the Office of Legal Affairs acted as Secretary of the Committee and of its Working Group. The Deputy Director of the Codification Division acted as Deputy Secretary of the Committee and of its Working Group.

5. At its 183rd meeting, on 7 March, the Committee, bearing in mind the terms of the agreement regarding the election of officers reached at its session in 1981, 2/ and taking into account the results of the pre-session consultations among its member States, elected its Bureau, as follows:

Chairman: Mr. Francis K. Muthaura (Kenya)

Vice-Chairmen: Mr. Neville Bissember, Jr. (Guyana)
Mr. Mauro Politi (Italy)
Mr. Marek Madej (Poland)

Rapporteur: Mr. Suresh Chandra Chaturvedi (India)

6. The Bureau of the Committee also served as the Bureau of the Working Group.

7. Also at its 183rd meeting, the Committee adopted the following agenda (A/AC.182/L.78):

1. Opening of the session.

2. Election of officers.

3. Adoption of the agenda.

4. Organization of work.

5. Consideration of the questions mentioned in General Assembly resolution 48/36 of 9 December 1993, in accordance with the mandate of the Special Committee as set out in that resolution.

6. Adoption of the report.

8. In accordance with paragraph 5 of General Assembly resolution 48/36, the Committee, having received requests for observer status from 43 permanent missions to the United Nations (Armenia, Azerbaijan, Belarus, Bolivia, Botswana, Bulgaria, Cameroon, Canada, Chile, Côte d'Ivoire, Croatia, Cuba, Democratic People's Republic of Korea, Denmark, Estonia, Ethiopia, Guatemala, Ireland, Jordan, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Morocco, Namibia, Nicaragua, Panama, Peru, Portugal, Republic of Moldova, Senegal, Slovakia, Slovenia, Sweden, Syrian Arab Republic, Thailand, Trinidad and Tobago, Uganda, Ukraine, United Republic of Tanzania, Uruguay and Viet Nam), took note of those requests and accepted the participation of observers from those Member States.

9. At its 183rd, 186th and 187th meetings, on 7, 9 and 10 March, in accordance with paragraph 5 of General Assembly resolution 48/36 and on the same basis as at its session in 1993, the Special Committee decided to invite intergovernmental organizations which had expressed an interest in participating in the plenary meetings of the Committee to attend those meetings during which the question of cooperation between the United Nations and regional organizations in the maintenance of international peace and security would be discussed. The Conference on Security and Cooperation in Europe, the Economic Cooperation Organization, the European Union, the Organization of the Islamic Conference, the League of Arab States, the Asian-African Legal Consultative Committee and the Organization of African Unity were invited to attend those meetings of the 1994 session during which that question would be discussed.

10. At its 183rd meeting, the Committee established a Working Group of the Whole and agreed on the following organization of work: up to 3 meetings would be devoted to organizational matters and to a general debate on all items concerning the mandate of the Committee; 14 or 15 meetings would be allocated to the proposals relating to the maintenance of international peace and security that had been submitted to the Committee during its session in 1993, as well as those which might be submitted to it at its 1994 session; and 6 or 7 meetings to the question of the peaceful settlement of disputes between States; 3 or 4 meetings would be held in reserve. It was understood that this distribution of meetings would be applied with the necessary degree of flexibility, taking account of the progress achieved in the consideration of the items.

11. With regard to the question of the maintenance of international peace and security, the Committee had before it a revised working paper entitled "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter", submitted by Bulgaria, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Jordan, Mozambique, Nicaragua, Nigeria, Panama, Paraguay, Poland, the Republic of Moldova, Romania, Uganda, Ukraine, Uruguay and Zambia, later joined by India and Tunisia (A/AC.182/L.79) (see para. 52 below); a revised working paper submitted by the Russian Federation under the title "Draft declaration on the improvement of cooperation between the United Nations and regional organizations" (A/AC.182/L.72/Rev.2); and another proposal by the same delegation entitled "New issues for consideration in the Special Committee". 3/ The Committee also had before it a revised proposal submitted by the Libyan Arab Jamahiriya with a view to enhancing the effectiveness of the Security Council in regard to the maintenance of

international peace and security, 4/ as well as a working paper submitted by Cuba, entitled "Strengthening of the role of the Organization and enhancement of its efficiency", 5/ a revised version of which was circulated during the latter part of the session (see para. 94 below). With respect to the question of the peaceful settlement of disputes between States, the Committee had before it a revised proposal submitted by Guatemala under the title "United Nations Model Rules for the Conciliation of Disputes between States" (A/AC.182/L.75/Rev.1). It also had before it a proposal entitled "Establishment of a Dispute Settlement Service offering or responding with its services early in disputes", submitted by Sierra Leone (see para. 109 below).

II. GENERAL DEBATE

Statement of the Rapporteur

12. In accordance with the decision taken at its 183rd meeting on the organization of its work, the Special Committee held a general debate at its 184th to 186th and 188th to 193rd meetings, from 7 to 17 March 1994.

13. All the representatives who took part in the general debate stressed the importance they attached to the work of the Committee at a time when the United Nations was being called upon to assume increased responsibilities, particularly in the area of the maintenance of international peace and security. They noted that the current changes taking place in the world had brought about not only new challenges for the United Nations, but also a variety of complex problems, which offered the Organization a unique and unprecedented opportunity to become a central forum for the maintenance of international peace and security and the peaceful settlement of disputes. The end of the cold war, it was also said, had opened new possibilities for unanimity and a convergence of views among States on these matters. The Committee should take advantage of these possibilities to seek new approaches that would enhance the effectiveness of the United Nations.

14. It was observed that the importance of the work of the Committee should be assessed from the point of view not only of the items on its current agenda but also of its past achievements. The 1982 Manila Declaration on the Peaceful Settlement of International Disputes (General Assembly resolution 37/10, annex), the 1988 Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field (resolution 43/51, annex) and the 1991 Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (resolution 46/59, annex) were cited as examples of the Committee's proven record of accomplishment in the drafting of rules and instruments aimed at strengthening the role of the United Nations and its effectiveness. In citing those examples, the speakers expressed the hope that the Committee would make further progress at its current session on the priority items of its agenda, namely: assistance to third States affected by the imposition of sanctions under Chapter VII of the Charter of the United Nations; enhancement of cooperation between the United Nations and regional organizations in the maintenance of international peace and security; and peaceful settlement of disputes. Attention was also drawn in this context to the question of the restructuring and expansion of the Security Council and the improvement of its working mechanisms. Several delegations emphasized the need for coordination between the Committee and the various groups created by the General Assembly.

15. On the question of the enhancement of cooperation between the United Nations and regional organizations in the maintenance of international peace and security, all the representatives who spoke emphasized the importance of enhancing such cooperation in the maintenance of international peace and security and the settlement of disputes. The role of regional organizations in the maintenance of international peace and security was considered to be particularly relevant at a time when the United Nations was over-stretched in areas of preventive diplomacy, peacemaking and peace-keeping, having to deal with a multiplicity of conflicts around the world with limited resources. Furthermore, it was pointed out, recent events had demonstrated that regional organizations should not be overlooked in building a global network of cooperation in this area, especially in dealing with conflicts at an early

stage. It was observed that Chapter VIII of the Charter provided the legal framework for cooperation between the United Nations and regional arrangements or agencies. The view was also expressed that there was a need for the definition of regional arrangements or agencies, their mandates and the legitimate scope of their actions.

16. The view was expressed that the phrase "Nothing ... precludes" in Article 52, paragraph 1, of the Charter made it clear that under the Charter there was no obligation or prohibition in respect of the establishment of regional organizations and attention was drawn to the need to ensure that actions by regional arrangements or agencies did not in any way impinge on the sovereignty and territorial integrity of States not members of those arrangements or agencies and were undertaken with the consent of the States concerned and, in principle, at their request. It was also emphasized that the arrangements establishing such organizations should not be contrary to the purposes and principles of the Charter and that their role in the maintenance of international peace and security was subject to the overall discretionary powers and authority of the Security Council.

17. Some representatives shared the opinion that, in seeking to enhance cooperation between the United Nations and regional organizations, it was important not to lose sight of the fact that the Charter conferred primary responsibility for the maintenance of international peace and security on the Security Council. The role of regional organizations in this area should therefore be seen as complementary to that of the Council.

18. Other representatives pointed to the varied nature of the institutional capabilities of regional organizations, including the fact that some regional organizations had mandates covering issues other than the maintenance of international peace and security. This, in their view, limited the potential of such regional organizations to contribute to the maintenance of international peace and security. A flexible approach should therefore be adopted in seeking enhanced cooperation between the United Nations and regional organizations.

19. According to a number of representatives, it was also important to recognize the autonomous status of regional organizations as described in the Charter. Cooperation between the United Nations and regional organizations, they observed, should be based on respect for the wishes of the States members of each regional organization and of the constituent instruments governing each organization.

20. Some representatives considered it important that regional organizations should try, within their spheres of competence, to seek ways and means of making appropriate contributions to preventive diplomacy, fact-finding, information gathering, early warning, provision of good offices, peace-keeping and post-conflict peace-building measures.

21. Other representatives, however, rejected the idea of any regional organization unilaterally taking on functions such as fact-finding, peacemaking or peace-keeping without the prior authorization of the Security Council. Such unilateral action, it was said, would violate the principle of the sovereign independence of each State and would constitute interference in the internal affairs of States.

22. Some representatives proposed that, as a practical step towards enhancing cooperation between the United Nations and regional organizations, a handbook on the subject should be compiled. Such a handbook could be of assistance to all

those concerned with the relationship between regional arrangements or agencies and the United Nations. It was also proposed that a seminar devoted to this subject should be held and that the legal aspects of the question should be addressed at the United Nations Congress on Public International Law to be held in 1995.

23. Many representatives noted with satisfaction that the General Assembly had authorized the Committee to invite intergovernmental organizations to participate in its debate on the question of enhancing cooperation between the United Nations and regional organizations. It was observed that the participation of regional organizations in the Committee's deliberations was most useful since the search for modalities for cooperation was a two-way process and was not unidimensional.

24. All the representatives who spoke welcomed the revised version of the working paper submitted by the Russian Federation (A/AC.182/L.72/Rev.2) and expressed the hope that work on the working paper would be finalized by the Committee at its current session.

25. With regard to the question of the implementation of Article 50 of the Charter related to assistance to third States affected by sanctions under Chapter VII, many representatives pointed out that this issue had become more urgent as a result of the increase in the number of cases of application of sanctions by the Security Council and the ever-growing number of third States affected by those sanctions. The remark was made that the current practice of relying on the political will of States with the required financial capabilities to mitigate the economic hardship suffered by affected States was unsatisfactory and that more systematic arrangements should be contemplated. It was also said that the establishment of a permanent mechanism would encourage States to carry out their obligations under the Charter by fully complying with sanctions imposed by the Security Council. The view was further expressed that when appropriate, in accordance with Article 48 of the Charter, the Security Council might decide to allow some exceptions from the application of sanctions in favour of States most likely to be affected by their implementation, provided that those exceptions did not run counter to the object of the sanctions. It was proposed that, when necessary, a mechanism for international control could be introduced for this purpose. It was also proposed that the Security Council pay special attention to the problems arising from the disruption of communication and transportation lines caused by the implementation of sanctions, as well as to the need to preserve existing infrastructural links, taking into account the unnecessary adverse effects of sanctions as mentioned in section IV of General Assembly resolution 47/120 B. The proposal to set up a trust fund under the authority of the Security Council, which would be funded from voluntary and assessed contributions to provide assistance to affected States, was supported by several delegations. In this context, attention was drawn to a working paper sponsored by a number of States (A/AC.182/L.79) and to the report of the Secretary-General on the question of special economic problems of States as a result of sanctions imposed under Chapter VII of the Charter (A/48/573-S/26705).

26. Some representatives, while sharing the concern that economic sanctions might have, in certain areas, negative economic consequences for States applying such measures, doubted that the most productive way of assisting those States consisted in the creation of new permanent institutions or mechanisms. The remark was also made that the concept of compensation for consequential economic damage was not found in the Charter. Article 50 of the Charter, it was noted, only provided that States with special economic problems resulting from the

imposition of sanctions by the Security Council should "consult the Security Council with regard to a solution of those problems". That provision, according to the representatives concerned, called for a case-by-case assessment in order to determine how best to assist the States affected by the imposition of sanctions and did not envisage a mechanism of general automatic application. It was also their opinion that the establishment of a trust fund would duplicate the activities of international financial institutions.

27. Other representatives held the view that, bearing in mind the number of third States being increasingly affected by the application of sanctions, a case-by-case approach was not viable. According to them, passing the problem on to international financial institutions, as had been suggested, would not offer a solution since the past record of such institutions in providing assistance to developing countries in general and their response to requests for assistance under the circumstances being discussed, in particular, had not been satisfactory, as they lacked the necessary additional resources required to address the problem effectively.

28. Some members expressed the opinion that the establishment of a fund to assist States affected by sanctions might raise expectations which could be difficult to fulfil. This, it was noted, could in the long run be detrimental to the sanctions regime as a whole. Some delegations described as valuable the recommendation of the Secretary-General, in his report entitled "An Agenda for Peace" (A/47/277-S/24111), that the Security Council should devise a set of measures involving the financial institutions and other components of the United Nations system that could be put in place to insulate third States from the effects of sanctions. It was further noted that, since the negative implications of economic sanctions often took the form of balance-of-payment difficulties, international financial institutions had a major responsibility for giving advice and assistance in such circumstances and should, therefore, be closely associated with the search for an effective solution of the problems involved. Attention was also drawn in this context to budgetary constraints at both the national and the international levels, making it most unlikely for a new fund to be an effective instrument for economic mobilization to assist affected States.

29. Concern was expressed that failure to address the problem was likely to weaken the sanctions regime. States, it was observed, might find it difficult to give full effect to the decisions of the Security Council, knowing that they would be severely affected by the application of the sanctions regime and that no formal assistance would be forthcoming to mitigate the harm. It was observed that all the provisions of Chapter VII of the charter were of equal importance for the effective carrying out of the preventive or enforcement measures envisaged therein and should be interpreted and implemented in their entirety. In this connection, it was stated that, since a mechanism existed within the Security Council to monitor compliance with sanctions, fairness and equity required that a similar mechanism be established to monitor the effect of a sanctions resolution on third States with a view to assisting them.

30. Some representatives expressed the view that, bearing in mind the magnitude of the adverse economic effects suffered by third States, there was a need for a comprehensive approach to the problem comprising a range of measures to be taken with a view to its solution. The proposal was made to establish a mechanism under Article 29 of the Charter to undertake, as a preventive measure, consultations with States most likely to be affected as a result of the implementation of preventive or enforcement measures in order to take their concerns into consideration when devising or reviewing sanctions regimes,

bearing in mind that the purpose of such consultations would not be to determine the principle of sanctions itself, which remained of the essence of the Council's authority. It was also observed that in its resolution 47/120 B the General Assembly requested the Security Council to examine several concrete measures in this respect and that any mechanism established by the Council should, following imposition of sanctions, ensure automaticity of assistance, predictability and considerations of equity.

31. Other representatives stressed that a case-by-case assessment was always needed in order to ascertain the special economic problems faced by certain States as a result of the application of preventive or enforcement measures under Chapter VII of the Charter, as well as the causal link between such problems and the application of economic sanctions. It was pointed out that the negative implications of economic sanctions often took the form of balance-of-payments difficulties, and that the international financial institutions should be closely associated in any effective solution to such problems. The view was expressed in this context that there was a need for a more thorough study of methods for evaluating the sanctions actually experienced by States, as there was currently no serious way of making a sound and objective evaluation.

32. The view was expressed that it should be incumbent on the United Nations to provide relief automatically to compensate third States for the damage resulting from the imposition of sanctions. More specifically, it was suggested that, before proceeding to take a decision on sanctions, the Security Council should undertake a study in order to evaluate the impact which such a decision would have on third States; States called upon to bear an inordinate burden would thus have early warning and a chance to be consulted beforehand.

33. That approach gave rise to objections on the ground that the decision of the Security Council to apply sanctions could not be subjected to any conditions not provided for in the Charter. It was also observed that, while the Charter did not provide for automatic compensation for economic damage consequential upon the imposition of sanctions, it did provide for an obligation to apply sanctions, once imposed by the Council.

34. The view was expressed by some representatives that the Committee should address the question of the provision of humanitarian assistance to the vulnerable populations of States against which sanctions were imposed. Another issue mentioned as calling for consideration by the Committee was the identification of ways and means to administer sanctions so as to cause the least possible hardship and loss to third States.

35. Some representatives observed that Article 49 of the Charter, which called for "mutual assistance in carrying out the measures decided upon by the Security Council", implied, at the very least, greater efforts on the part of all Member States, especially those States with the necessary means, and international financial institutions to provide assistance to affected States. That requirement, it was stated, was already being complied with at the bilateral level.

36. Some representatives observed that the current method of work of the Security Council, which relied heavily on closed informal consultations, prevented potentially affected States from exercising their rights under Article 50 of the Charter at a sufficiently early stage. It was proposed that those States should be invited by the Council to take part in the consultations relating to the institution or review of sanctions.

37. Other representatives stated that suggestions of a lack of transparency in the work of the Security Council largely ignored the realities of the situation. In their opinion, there was no lack of knowledge or information on the part of any delegation as to what the Council was contemplating before it took action and Member States were not denied the opportunity to make their views known to the Council at any time.

38. Many representatives referred to the role, composition and functioning of the Security Council and to ways of enhancing the Council's effectiveness in the maintenance of international peace and security. It was observed that, while the Council had in recent years taken unanimous decisions on many complex and critical issues, there was nevertheless a need to make its composition more representative, particularly with regard to the distribution of its permanent seats, bearing in mind the increase in membership of the United Nations. The remark was also made that the Council's primary responsibility in the maintenance of international peace and security should not devolve only upon a small group of States. A review of the composition and functions of the Security Council was therefore advocated in the interest of representativity and effectiveness. The view was also expressed that such a review should be based on the principle of universality and participation of all countries and, therefore, should have the effect of giving each of them a fair chance to sit in the Council.

39. Other representatives recalled that the question of the expansion of the membership of the Security Council and other matters related to the Council were currently being considered by the Ad Hoc Working Group established for that purpose and that consideration of the issue in the Committee would be a duplication of effort.

40. Some representatives called for consultations between that Ad Hoc Working Group and the Committee.

41. In connection with the call for expansion of the membership of the Security Council, some representatives made specific reference to the working paper submitted by the delegation of Cuba 5/ which, in their view, embodied many useful ideas and formed a good basis for future work on this and other issues before the Committee. Reference was also made to the working paper submitted by the delegation of the Libyan Arab Jamahiriya 4/ on the strengthening of the role of the United Nations, which, it was stated, contained the necessary elements on ways of expanding the Security Council and enhancing its effectiveness.

42. Other representatives said that they found neither of the working papers to contain material likely to provide a basis for agreement; nor could the ideas contained therein lead, in their opinion, to a more effective United Nations or increase areas of general agreement. They considered that the time and resources of the Committee should be spent on the consideration of issues on which there were possibilities of agreement.

43. A number of representatives stressed that efforts should be made to revitalize the General Assembly so as to enable it to carry out fully the functions assigned to it by the Charter.

44. On the question of the peaceful settlement of disputes, a number of representatives stressed the importance of elaborating on the procedures provided for in the Charter and favourably commented on the revised version of the draft Model Rules for the Conciliation of Disputes between States submitted by the delegation of Guatemala (A/AC.182/L.75/Rev.1). Through the adoption of

such rules, it was said, full use of the potential of the United Nations as the most appropriate forum for the settlement of disputes could be realized.

45. Some representatives stressed that, while it was necessary to retain a certain amount of formality and to observe the basic rules of conciliation, the value of the Model Rules would lie in their flexibility, which would leave room for creativity in the actual conduct of the proceedings and allow for the required accommodations in any given case. The view was also expressed that the paramount principle of prior consent of the parties concerned must be kept in mind at all stages of the conciliation proceedings. The hope was expressed that the Model Rules could be finalized at the current session.

46. Regarding new issues that could be considered by the Committee, some representatives reiterated the view that the Committee should examine the proposal that the Secretary-General should be authorized to request advisory opinions from the International Court of Justice, particularly as the Court was an important part of the process of preventive diplomacy. In their opinion, the prevention and removal of potential disputes before they escalated into conflicts would also lessen the burden on the Security Council. Other representatives reiterated their doubts about that proposal.

47. Some representatives referred to the question of the membership of the Committee. In the view of some, the Committee should be enlarged taking into account the significant increase in the membership of the United Nations, the importance of the subjects under consideration and the actual extent of participation in the Committee, given the growing number of requests for observer status. In the light of the above, it was proposed that the Committee be open to all Member States on an equal basis.

48. Other representatives, however, stressed that limited-membership committees had had and might still have a role to play in the United Nations system and therefore felt that the question of the membership of the Committee should be approached with an open mind.

49. At the end of the session, all the participants expressed their deep gratitude and appreciation to the Chairman, Mr. Francis K. Muthaura, for his excellent guidance, dedication and outstanding contribution, with the efficient help of the members of the Bureau and the Secretariat, to the successful outcome of the work.

III. MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

Statement of the Rapporteur

50. The Special Committee considered the question of the maintenance of international peace and security at its 185th, 186th, 188th, 189th and 191st meetings, from 9 to 11 and on 16 March 1994, as well as at the 2nd to 16th, 21st and 22nd meetings of its Working Group, from 8 to 18 and on 22 and 23 March 1994.

A. Consideration of working paper A/AC.182/L.79 on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter

51. Working paper A/AC.182/L.79 was submitted by Bulgaria, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Jordan, Mozambique, Nicaragua, Nigeria, Panama, Paraguay, Poland, the Republic of Moldova, Romania, Uganda, Ukraine, Uruguay and Zambia, later joined by India and Tunisia. It was introduced at the 191st meeting of the Committee, on 16 March, and considered at the 13th to 16th meetings of the Working Group, from 16 to 18 March.

1. Introduction of the working paper

52. The working paper read as follows:

"Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter

"The General Assembly,

"Recognizing that the imposition of sanctions against a State under Chapter VII of the Charter of the United Nations may require the joint efforts of Member States to offer assistance to third States economically affected by the sanctions,

"Recalling Article 49 of the Charter of the United Nations, which spells out the obligation of the Member States to join in affording mutual assistance in carrying out measures decided upon by the Security Council in conformity with Chapter VII of the Charter,

"Recalling also the special responsibility of the Security Council under Article 50 of the Charter, which entitles States which find themselves confronted with special economic problems as a result of the carrying out of preventive or enforcement measures taken by the Security Council against any other State to consult the Security Council with regard to a solution of those problems,

"Recalling further its resolution 48/210 of 21 December 1993, entitled 'Economic assistance to States affected by the implementation of the Security Council resolutions imposing sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro)',

"Welcoming the recommendation of the Secretary-General in his report entitled 'An Agenda for Peace' (A/47/277-S/24111) that the Security Council devise a set of measures involving the financial institutions and other components of the United Nations system that can be put in place to insulate States from such difficulties; such measures would be a matter of equity and a means of encouraging States to cooperate with decisions of the Council,

"Recognizing that providing assistance to third States affected by the application of sanctions would be an important step in maintaining the effectiveness of sanctions collectively decided by the international community,

"Recalling:

"(a) That the question of assistance to third States affected by the application of sanctions has been addressed recently in several forums, including the General Assembly and its subsidiary organs and the Security Council,

"(b) Its resolution 47/120 A of 18 December 1992, entitled 'An Agenda for Peace: preventive diplomacy and related matters', in which it decided to continue early in 1993 its examination of other recommendations contained in the report of the Secretary-General entitled 'An Agenda for Peace', as well as implementation of the provisions of Article 50 of the Charter of the United Nations,

"(c) The statement made by the President of the Security Council (S/25036), in which the Council expressed its determination to consider this matter further,

"Recalling also its resolution 47/120 B of 20 September 1993, entitled 'An Agenda for Peace', in particular section IV, 'Special economic problems arising from the implementation of preventive or enforcement measures',

"Taking note with appreciation of the report of the Secretary-General prepared pursuant to the note by the President of the Security Council regarding the question of special economic problems of States as a result of sanctions imposed under Chapter VII of the Charter (A/48/573-S/26705),

"Recognizing that third States are still confronted with adverse economic and social problems owing to the imposition of sanctions under Chapter VII,

"Recognizing also the need for an appropriate mechanism and procedures to address these problems,

"1. Decides to establish a trust fund, consistent with relevant resolutions of the Security Council, to assist financially third States affected by the imposition of sanctions under Chapter VII; contributions to the fund shall consist of:

"(a) A percentage of assessed contributions;

"(b) Voluntary contributions from Member States, and from funds available to international organizations both inside and outside the United Nations system, in particular the international financial institutions and the regional development banks, as well as non-governmental organizations and private institutions and individuals;

"2. Invites the Security Council:

"(a) To determine the level of the Trust Fund for each particular case of the imposition of sanctions under Chapter VII of the Charter (on a case-by-case basis), in accordance with the submissions made by the affected Member States;

"(b) To manage and operate the Trust Fund where appropriate in consultation with the Secretary-General, or any other body deemed appropriate by the Security Council for this purpose, and the affected Member States should be able to approach this body without any exception for redressal of their problems;

"3. Requests the Security Council to ensure that its committees and other bodies entrusted with the task of monitoring the implementation of sanctions take into account, in discharging their mandates, the need to avoid hardship consequences for other Member States without prejudice to the effectiveness of such sanctions;

"4. Invites the Secretary-General to prepare draft guidelines on the operation of the Trust Fund and to present these guidelines to the Security Council for further consideration and adoption;

"5. Resources from the Trust Fund should be utilized to provide direct financial assistance, inter alia, through bilateral or multilateral credit lines, as well as to finance technical cooperation programmes in support of the affected countries, in the context of Article 50;

"6. All other types of support, including direct assistance in cash or in kind, provision of alternative sources of supply and alternative markets, specific commodity purchase agreements, compensatory adjustments of international tariffs, assistance for promotion of investments and technical cooperation to the affected countries, should be encouraged;

"7. Requests the Security Council to consider preparing a set of guidelines and/or procedure to be applied in the consideration of the applications by the affected countries for assistance, in the context of Article 50. The guidelines may include, inter alia:

"(a) The right to approach the Security Council for assistance;

"(b) Consideration, without exception and undue delay, of all applications for assistance under Article 50;

"(c) Rendering non-preferential and fair treatment to all applications;

"(d) Inviting the affected Member States to its meetings and to the meetings of its subsidiary bodies;

"(e) Procedure and methodology for determining and evaluating losses as a result of the imposition of sanctions;

"8. Also requests the Security Council to consider the establishment of a permanent mechanism for consultations between the Council and those Member States most likely to be affected as a result of their implementation of Security Council resolutions imposing sanctions;

"9. Requests the Secretary-General to report on a regular basis on the implementation of the present resolution."

53. In introducing the working paper at the 191st meeting, one of the sponsors stressed that the existing modalities of application of the provisions of Article 50 of the Charter were inadequate. Working paper A/AC.182/L.79 consolidated two working papers, A/AC.182/L.76/Rev.1 and A/AC.182/L.77, that had been submitted to the Special Committee at its 1993 session. The report of the Secretary-General referred to in the preamble (A/48/573-S/26705) would provide useful information in the consideration of the question inasmuch as it described the practice followed by the Security Council in the implementation of Article 50 and contained other background material. The speaker singled out, among the elements included in the working paper, the idea of establishing a trust fund, to be administered by the Security Council, which would determine the level of assistance to be provided to the affected States on a case-by-case basis. The working paper also contained other proposals, including one on consultations between the Secretary-General and States that might be or were affected by the imposition of sanctions.

54. Another sponsor stressed that the mechanisms contemplated in the working paper would be automatic in their application.

2. Summary of the debate

55. In the Working Group, some representatives stressed that there was an urgent need to address seriously the problem of adverse economic effects caused to third States as a result of the application of sanctions by the Security Council, particularly in view of the increase in the number of adversely affected States. In accordance with Article 50 of the Charter, such States had the right to consult the Security Council with regard to a solution of the problems arising from the imposition of sanctions. In the view of those representatives, the time had come to develop mechanisms for the implementation of the provisions of Article 50 in a more practical manner, bearing in mind that the right to consult was not an end in itself and had been intended by the drafters of the Charter to have tangible and concrete effects.

56. Other representatives stated that they recognized the existence of the problem and the need to assist those States that were adversely affected by the imposition of sanctions, with a view to lessening their burden. While expressing readiness to seek ways and means to deal with the problem, they questioned the idea of solving it by establishing new mechanisms within the United Nations. In their view, it was difficult to address in one rigid framework all the difficulties faced by third States as a result of the imposition of sanctions.

57. While the problem was generally recognized as serious and urgent, inasmuch as some countries continued to be confronted with adverse economic problems as a result of the imposition of sanctions, views differed on how best to address it.

58. Some representatives considered working paper A/AC.182/L.79 a good basis for finding a solution to the problem. Others took the opposite view, on the ground that a consensus was unlikely to emerge on the basis of the paper in question, and proposed to take as a point of departure ideas borrowed from the report of the Secretary-General (A/48/573-S/26705), from General Assembly resolution 47/120 B and from other sources and to analyse them with a view to determining which ones merited further consideration. Those delegations were not prepared to work on the basis of the working paper, but were ready to discuss the ideas contained in it, as well as other ideas, including those contained in the Secretary-General's report.

59. Some representatives supported the establishment of a trust fund, referred to in operative paragraph 1 of the working paper, as one of the viable steps to be taken immediately towards a solution of the problem of assistance to third States affected by the imposition of sanctions. The fund would be financed by assessed and voluntary contributions and would be administered under the authority of the Security Council in accordance with guidelines to be established by it. It was observed that the establishment of such a trust fund was mentioned in General Assembly resolution 47/120 B.

60. Other representatives had difficulties of principle with the idea. In addition, they found it impractical and viewed it as a simplistic attempt to solve a problem which was very complex and of such magnitude that requests for assistance were bound to exceed by far the resources of the proposed fund. In their view, it was important to keep in mind that it was essential to respect the basic provisions of the Charter and that there was an unqualified obligation to apply mandatory sanctions. They also pointed out that the concept of compensation for any consequent economic damage was not found in the Charter. They suggested that instead of envisaging the setting up of new institutions, utilization should be made of existing international financial institutions, such as the World Bank, the International Monetary Fund, regional development banks, the General Agreement on Tariffs and Trade, the United Nations Development Programme and non-governmental organizations. Those institutions, it was stated, were well placed to assist in the formulation of policies and in coordinating financial assistance to adversely affected States. Mention was also made of bilateral assistance from donor countries and it was recalled that a number of affected States had in fact already been assisted in this manner. It was further remarked that problems stemming from the imposition of sanctions were in many cases part and parcel of the overall economic situation of the affected States and did not lend themselves to a piecemeal solution.

61. An opposing view expressed was that the international financial institutions did not in themselves provide a comprehensive solution, since they lacked the necessary additional resources and the mechanisms to solve the problem.

62. Some representatives insisted that the creation of a trust fund would be a useful step, even though it was only one of the ways in which assistance could be provided to affected countries. The idea of a trust fund, it was stated, was not new: it had found expression, for instance, in the establishment in 1991 of the Global Environment Facility, which had been set up to address specific environmental problems. It provided a better response to the problems of countries affected by the imposition of sanctions than bilateral assistance or existing financial institutions, which were established for different purposes.

63. Other representatives considered the idea of such a permanent mechanism to be alien to the Charter. It was recalled that a proposal made at San Francisco

that the Security Council should establish a mechanism to deal with matters under Article 50 of the Charter had been set aside. The remark was also made that the operation of the Global Environment Facility had been described as less than satisfactory.

64. With regard to other types of support referred to in operative paragraph 6 of the working paper, the proposed concepts were viewed by many representatives as acceptable for future consideration.

65. Some representatives, while expressing support for operative paragraph 6 as a whole, stated that the various measures envisaged to assist adversely affected States were not adequate in isolation, but that there was rather a need to explore with an open mind every possibility for addressing this problem. Proposals included the establishment of a fund, the improvement of consultations, both before and after the imposition of sanctions, between the Security Council and those States most likely to be thereby affected, the enhancement of the role of international financial institutions in this field, and the adoption of a more flexible approach by the competent committees and organs of the Security Council in discharging their mandate with respect to sanctions regimes. It was further stated that a focal point should be established for coordinating the assistance to affected third States.

66. A number of representatives observed that the practical problem of the assessment of the actual damage suffered by third States as a result of the imposition of sanctions should be addressed and that a methodology should be developed to that end. It was pointed out that such a methodology could not be developed in the abstract and would have to be based on a technical study aimed at determining the criteria to be applied. Such a study, it was suggested, should be carried out by international financial institutions, and the opinion of Member States should also be solicited. It was proposed that the Secretary-General, in his capacity as Chairman of the Administrative Committee on Coordination, should be requested to undertake an in-depth study of the methodology to be used in assessing damage caused to third States and that the role which could be played by the Economic and Social Council should also be explored.

67. Other representatives, while not opposed to the idea of a further study by the Secretary-General, urged the Working Group not to lose track of the concrete issue before it, namely, the search for ways of assisting adversely affected States. According to them, no study was needed to find out whether or not damage had been caused to third States.

68. The proposal that, where there existed a donors group or a consultative meeting, such institutions should be requested to focus on assistance, on a case-by-case basis, to countries adversely affected by the imposition of sanctions and to coordinate such assistance was supported by several representatives. Some took the view that it should be included in operative paragraph 6 of the working paper. Others suggested reflecting it in a separate paragraph. Lastly, others recalled that the question of insertion did not arise, as the Working Group was not involved in drafting, but in discussing ideas contained in the document.

69. The idea reflected in operative paragraph 3 of the working paper, of requesting the Security Council in its implementation of sanctions to take into account "the need to avoid hardship consequences for other Member States without prejudice to the effectiveness of such sanctions", was supported by several representatives, who noted that it was also mentioned in the Secretary-General's

report entitled "An Agenda for Peace" (A/47/277-S/24111). It was also proposed that the ideas contained in operative paragraph 3 should be formulated along the lines of section IV, paragraph 3, of General Assembly resolution 47/120 B.

70. Some representatives, however, struck a note of caution in this respect, pointing out that efforts to minimize the negative effects of sanctions on third States should not impair the effectiveness of the measures taken by the Security Council.

71. The substance of operative paragraph 8 of the working paper concerning the holding of consultations between the Security Council and those Member States most likely to be affected as a result of the imposition of sanctions received the full support of some representatives but gave rise to reservations or objections on the part of others.

72. Positive comments included the remark that prior consultations by the Security Council with those States most likely to be affected as a result of their implementation of Council resolutions imposing preventive and enforcement measures would provide a preventive approach to the problem, which appeared to be more constructive than attempting to address the immense problems of adversely affected States after they had occurred. Furthermore, it was stated that the special role played in the implementation of sanctions by States which had economic ties with the target State ought to be recognized, bearing in mind Articles 49 and 50 of the Charter. It was also observed that in section IV, paragraph 2 (a), of its resolution 47/120 B, which had been adopted by consensus, the General Assembly had called for the strengthening of the consultative process in relation to the special economic problems of States arising out of the measures imposed by the Security Council.

73. Moreover, stress was laid on the need to make a careful distinction between the question of the possible adverse economic effects of sanctions imposed by the Security Council, as referred to in Article 50 of the Charter, and that of the decision to adopt sanctions, which could not be subject to any condition not provided for in the Charter. It was remarked that tailoring sanctions to specific situations so as to avoid potential negative effects on third States was a questionable one.

74. The latter contention gave rise to objections. A creative interpretation of the Charter was advocated and the remark was made that tailoring sanctions to the requirements of each situation was part of the logic of the system, inasmuch as sanctions had a specific goal and were not intended to harm third States unnecessarily: in selecting the measures to be applied, due consideration had to be given to their impact on those States and to the possibility of achieving the desired result while minimizing unintended harmful effects.

75. With specific reference to the possible holding of consultations prior to the imposition of sanctions, some representatives warned against subjecting the decision-making process of the Security Council to conditions not provided in the Charter. They pointed out that, in the discharge of its responsibility in the maintenance of international peace and security, the Council had to be able to act swiftly and that urgency might hamper the possibility of conducting consultations. The remark was also made that meaningful consultations could hardly be held on the impact of sanctions prior to their imposition. On the other hand, it was conceivable that the Secretary-General could be invited to submit, where possible, a study of the general economic context in which such measures should be applied, so as to facilitate the provision of assistance to the affected States.

76. Other representatives pointed out that the concluding phrase of operative paragraph 3 of document A/AC.182/L.79 clearly indicated that the proposals in that document were "without prejudice to the effectiveness of ... sanctions". It was further observed that requiring the Security Council to "consider" holding consultations with potentially affected States in no way limited the Council's discretion as to the actual holding of such consultations or the conclusions to be drawn therefrom. Concern was also expressed that too much emphasis was being placed on the element of urgency involved in the imposition of sanctions. Attention was drawn to the difference between military action which had to be swift and economic measures which took time to set in place and were slow to produce results: in the latter context, it was argued, consultations extending over one or two weeks were unlikely to have any appreciable delaying effect.

77. It was pointed out that this argument however failed to take into account the fact that sanctions not only aimed at compelling a State to meet the requirements of international peace and security but also served the function of precipitating and concretizing more effectively than a mere condemnation the attitude of the international community towards the target State.

78. The idea of establishing a permanent mechanism for consultations was endorsed by some representatives, who viewed it as in keeping with Article 29 of the Charter, but gave rise to doubts on the part of others who warned that the diversity of the situations to be handled called for flexible arrangements rather than unwieldy machinery.

79. As for the States to be involved in the proposed consultations, States having close economic ties with the target State were mentioned. It was also said that the States most likely to be affected were the neighbouring States in view, inter alia, of the disruptive effect of sanctions on their communication and transportation lines. On the other hand, the remark was made that, at a time of global economic interdependence, the criterion should be the impact of sanctions rather than geographical proximity. Attention was drawn in this connection to the wording of Article 50, which left it to each State to determine whether it was confronted with special economic problems as a result of the imposition of sanctions.

80. Other comments included the remark that, through consultations, the Security Council should be able not only to take into account the negative consequences of sanctions on States but also to envisage means of providing them with assistance and advice.

3. Recommendation of the Committee

81. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization recommends that the General Assembly, in the light of the report of the Committee on the work of its 1994 session concerning the implementation of the provisions of the Charter related to the special economic problems confronting States and arising from the carrying out of preventive or enforcement measures under Chapter VII of the Charter, and noting with appreciation the report of the Secretary-General regarding the question of special economic problems of States as a result of sanctions imposed under Chapter VII of the Charter (A/48/573-S/26705), invite the Secretary-General to submit, before the 1995 session of the Committee, a report on the question of the implementation of the provisions of the Charter, including Article 50, related to the special economic problems confronting

States and arising from the carrying out of sanctions mandated under Chapter VII of the Charter, analysing the proposals and suggestions on this issue contained in the report of the Committee on its 1994 session.

82. In connection with the preceding paragraph, some delegations expressed their understanding that the proposed report of the Secretary-General should take into account, not just repeat, the report he had already submitted (A/48/573-S/26705) and should go further in analysing the proposals made by delegations on this issue during the discussion in the Committee, giving due attention to the possible practical ways and means of carrying any of them out. The hope was also expressed that the report already submitted by the Secretary-General would be discussed in an appropriate forum.

B. Draft declaration on the enhancement of cooperation between the United Nations and regional arrangements or agencies in the maintenance of international peace and security

83. At its 2nd meeting, on 8 March, the Working Group began its consideration of a revised version (A/AC.182/L.72/Rev.2) of a draft declaration on the improvement of cooperation between the United Nations and regional organizations, originally submitted by the Russian Federation at the 1992 session of the Committee.

1. Introduction of the working paper by the sponsor

84. In introducing the working paper, the sponsor observed that the current version took into account the comments made at previous sessions, in an effort to arrive at a generally acceptable text. It was therefore less ambitious than previous drafts and more restricted in scope, focusing on the cooperation between the United Nations and regional arrangements or agencies in the maintenance of international peace and security in a narrow sense. However, the working paper retained the main ideas contained in previous versions, namely, the need to enhance the cooperation between the United Nations and regional arrangements or agencies on the basis of complementarity, the need for flexibility in such cooperation, the requirement that activities of regional arrangements or agencies conform to the Charter of the United Nations, the need to encourage resort to regional arrangements or agencies before referral of a dispute to the Security Council, and the reaffirmation of the responsibilities of the Security Council in the maintenance of international peace and security. The sponsor pointed out that the working paper was based on the provisions of Chapter VIII of the Charter, resolutions and declarations of the General Assembly, texts emanating from the Security Council, the report of the Secretary-General entitled "An Agenda for Peace" (A/47/277-S/24111), and current practice. It was aimed at elaborating on Chapter VIII of the Charter in the light of present-day developments. The sponsor further observed that the working paper consisted of three parts, which were addressed to regional arrangements or agencies, States and the United Nations, respectively. Those entities constituted an interactive chain, of which States which were members of both the United Nations and regional arrangements or agencies constituted the central element.

2. Consideration of the working paper

85. As a result of intensive work, and on the basis of the revised working paper, the Committee completed its work on the draft declaration on the enhancement of cooperation between the United Nations and regional arrangements or agencies in the maintenance of international peace and security and decided to submit it to the General Assembly for consideration and adoption (see para. 89 below).

86. Following the adoption of the draft declaration by the Working Group, one delegation made a statement on paragraph 10, pointing out that all cooperation between the United Nations and regional agencies in the maintenance of international peace and security should be based on a recognition of the autonomy of the two systems and respect for their respective mandates and statutes. It expressed concern that a proliferation of such activities might occur and that actions undertaken by the Security Council might duplicate those of regional organizations. The same delegation reaffirmed the sovereign right of all States at any time to bring any dispute to the attention of regional or international bodies and reserved its right to challenge any decision qualifying as a threat to regional peace and security matters falling strictly within the domestic jurisdiction of States.

3. Views of intergovernmental organizations invited to participate in the debate on the question of the cooperation between the United Nations and regional organizations

87. In accordance with the decision taken at its 183rd meeting, on 7 March, and on the same basis as at its session in 1993, the Committee invited representatives of intergovernmental organizations which had expressed an interest in so doing to participate in the debate in plenary meetings on the question of the cooperation between the United Nations and regional organizations. Statements were made by such intergovernmental organizations at the 185th, 186th, 188th and 189th meetings, from 9 to 11 March 1994.

88. Representatives of intergovernmental organizations expressed support for strengthening and enhancing the cooperation between their respective organizations and the United Nations in the maintenance of international peace and security, and described instances of such cooperation and efforts undertaken at the regional level for the settlement of disputes and conflicts. It was observed that the activities of the United Nations and of regional arrangements or agencies in the maintenance of international peace and security should be complementary, and that this objective could be better achieved if the United Nations and regional arrangements or agencies considered the possibility of cooperating with each other at the earliest possible stage in a dispute. The point was made that cooperation between the United Nations and regional arrangements or agencies should be based on the respect for the autonomy of each organization, and that it should be adapted to the particular circumstances of each specific situation. The view was expressed that such cooperation should also extend to the field of socio-economic development, which would contribute to the maintenance of international peace and security and to the fulfilment of the purposes of the Charter of the United Nations. The view was expressed that communication between the Security Council and regional arrangements or agencies should be improved, and that the latter might be associated, where appropriate, with the consultations within the framework of the Council. It was suggested that the wording in the working paper before the Committee on the question of

the cooperation between the United Nations and regional organizations should be such as to encompass intraregional organizations.

4. Text of the draft declaration on the enhancement of cooperation between the United Nations and regional arrangements or agencies in the maintenance of international peace and security, submitted by the Committee to the General Assembly for consideration and adoption

89. The text of the draft declaration on the enhancement of cooperation between the United Nations and regional arrangements or agencies in the maintenance of international peace and security which the Committee submits to the General Assembly for consideration and adoption reads as follows:

"Draft declaration on the enhancement of cooperation between the United Nations and regional arrangements or agencies in the maintenance of international peace and security

"The General Assembly,

"Recalling the provisions of the Charter of the United Nations concerning the role of regional arrangements or agencies in the maintenance of international peace and security, in particular the provisions of Chapter VIII of the Charter,

"Recalling also that resort to regional arrangements or agencies is among the means referred to in Chapter VI of the Charter for the peaceful settlement of disputes,

"Recognizing that regional arrangements or agencies can play an important role in preventive diplomacy and in enhancing regional and international cooperation,

"Recognizing also the importance of the role of regional arrangements or agencies in dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such regional arrangements or agencies and their activities are consistent with the purposes and principles of the United Nations,

"Taking into account the experience gained and the favourable results achieved by regional arrangements or agencies in the peaceful settlement of disputes in different parts of the world,

"Bearing in mind the variety of mandates, scope and composition of regional arrangements or agencies,

"Considering that action at the regional level can contribute to the maintenance of international peace and security,

"Emphasizing that respect for the principles of sovereignty, territorial integrity and political independence of States and non-intervention in matters which are essentially within the domestic jurisdiction of any State is crucial to any common endeavour to promote international peace and security,

"Emphasizing also that peace-keeping activities undertaken by regional arrangements or agencies should be conducted with the consent of the State in the territory of which such activities are carried out,

"Stressing the primary responsibility of the Security Council, under Article 24 of the Charter, for the maintenance of international peace and security,

"Emphasizing that the efforts made by regional arrangements or agencies, in their respective fields of competence, in cooperation with the United Nations can usefully complement the work of the Organization in the maintenance of international peace and security,

"Stressing the need to enhance cooperation between the United Nations and regional arrangements or agencies in the maintenance of international peace and security,

"Considering that such enhanced cooperation between the United Nations and regional arrangements or agencies would promote collective security in accordance with the Charter,

"Solemnly declares that:

"1. In accordance with the provisions of the Charter of the United Nations concerning the role of regional arrangements or agencies in the maintenance of international peace and security, in particular Chapter VIII of the Charter:

"(a) The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council;

"(b) The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the States concerned or by reference from the Security Council;

"(c) The above provisions in no way impair the application of Articles 34 and 35 of the Charter;

"(d) The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority, but no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Council;

"(e) The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security;

"2. Regional arrangements or agencies can, in their fields of competence and in accordance with the Charter of the United Nations, make important contributions to the maintenance of international peace and security, including, where appropriate, through the peaceful settlement of disputes, preventive diplomacy, peacemaking, peace-keeping and post-conflict peace-building;

"3. Cooperation between regional arrangements or agencies and the United Nations, in the maintenance of international peace and security, may take various forms, including, inter alia:

"(a) Exchange of information and the holding of consultations at all levels;

"(b) Participation as appropriate in the work of the United Nations organs, in accordance with the applicable rules of procedure and practices;

"(c) Making available personnel, material and other assistance, where appropriate;

"4. Cooperation between regional arrangements or agencies and the United Nations should be in accordance with their respective mandates, scope and composition and should take place in forms that are suited to each specific situation, in accordance with the Charter;

"5. Regional efforts undertaken by regional arrangements or agencies in the area of the maintenance of international peace and security, within their respective fields of competence and in accordance with the purposes and principles of the Charter, should be encouraged and, where appropriate, supported by the Security Council;

"6. States participating in regional arrangements or agencies are encouraged to consider the possibility of increasing efforts at the regional level for the maintenance of international peace and security in accordance with the Charter;

"7. States participating in regional arrangements or agencies are encouraged to promote confidence-building at the regional level for the maintenance of international peace and security;

"8. States participating in regional arrangements or agencies are encouraged to consider the possibility of using or, where appropriate, establishing or improving at the regional level procedures and mechanisms for the early detection, the prevention and the peaceful settlement of disputes, in close coordination with the preventive efforts of the United Nations;

"9. Regional arrangements or agencies are encouraged to consider, as appropriate, in their fields of competence, ways and means for promoting closer cooperation and coordination with the United Nations with the aim of contributing to the fulfilment of the purposes and principles of the Charter, including in the fields of preventive diplomacy, peacemaking and post-conflict peace-building, and, where appropriate, peace-keeping;

"10. Regional arrangements or agencies are encouraged to consider, in their fields of competence, the possibility of establishing and training groups of military and civilian observers, fact-finding missions and contingents of peace-keeping forces, for use as appropriate, in coordination with the United Nations and, when necessary, under the authority or with the authorization of the Security Council, in accordance with the Charter;

"11. The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the

Charter of the United Nations, 6/ the Manila Declaration on the Peaceful Settlement of International Disputes, 7/ the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, 8/ the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field 9/ and the Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security 10/ are hereby reaffirmed together with their provisions concerning the activities of regional arrangements or agencies in the maintenance of international peace and security;

"12. Nothing in the present declaration is to be construed as prejudicing in any manner the provisions of the Charter."

C. Consideration of the working paper submitted by Cuba entitled "Strengthening of the role of the Organization and enhancement of its efficiency"

90. At its 10th meeting, on 14 March, the Working Group considered the working paper submitted by Cuba, entitled "Strengthening of the role of the Organization and enhancement of its efficiency", the text of which is reproduced in paragraph 90 of the report of the Committee on its 1993 session. 11/

91. In introducing the working paper, the sponsor observed that its consideration by the Committee was particularly timely in view of the adoption by the General Assembly of resolution 48/26 on 3 December 1993, providing for the establishment of an open-ended working group to consider all aspects of the question of increase in the membership of the Security Council, and other matters related to the Council. That Working Group, which had recently begun its difficult task, would benefit from the relevant discussions in the Committee. He also stressed that, while the working paper had been presented to the Committee at its 1993 session, the proposals included therein, after extensive consultations with many delegations, remained relevant. Their consideration by the Committee would, in his view, constitute an important contribution to the ongoing efforts for the democratization of the Security Council, as well as the revitalization of the General Assembly, bearing in mind the functions entrusted to it under Chapter IV of the Charter in the area of the maintenance of international peace and security.

92. The view was expressed that the working paper constituted a good basis for the consideration of important issues of concern to many delegations, and that its examination by the Committee would usefully contribute to the work carried out on related questions in other forums.

93. There was, however, also a view that no positive result could be expected from a discussion of the working paper in the Committee. It was stated that the working paper was contrary to the scheme of the Charter and as such not likely to improve the functioning of the United Nations.

94. A revised version of the working paper was submitted by Cuba following the debate. It read as follows:

"Strengthening of the role of the United Nations in the maintenance of international peace and security

"The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, in the fulfilment of its mandate, must be directly linked to the transformations that are taking place in the Organization and, in particular, to the growing awareness of the need to reform the Security Council by making it more representative and transparent.

"The increase in the membership of the Organization; the necessity of recovering the balance envisaged in the Charter between the various principal organs, in particular the Security Council and the General Assembly; the full implementation of the principles of the sovereign equality of States and equitable geographical representation; and the importance of carrying out a democratization of the United Nations, based on the universal nature of its composition, with truly equal rights and duties for all the States that constitute it - all impose on the Committee specific tasks that it must perform in fulfilment of its mandate.

"Consequently, it should contribute actively to the work of the Working Group established under General Assembly resolution 48/26 of 3 December 1993 by bringing its wealth of experience to an analysis of the role of the Security Council in current conditions, in strict implementation of the letter and the spirit of the Charter of the United Nations.

"On the basis of the foregoing, the Committee should perform the following tasks:

"(a) Establishment of a working group with the mandate of contributing, with studies of a legal nature, to the work of the Working Group established by General Assembly resolution 48/26 on the following matters:

"(i) Preparation of a report on the current and future composition of the Security Council, in the light of the principle of equitable geographical distribution;

"(ii) Effects of the special privileges enjoyed by the permanent members of the Council, in the light of the principle of the sovereign equality of States, and the viability of eliminating or modifying them;

"(iii) Preparation of definitive rules of procedure of the Security Council;

"(iv) Changes that should be made in the annual report of the Security Council to the General Assembly, with the aim of meeting the responsibilities assigned to both organs by Articles 15 and 24 of the Charter; and the viability of having the Security Council submit to the General Assembly the special reports envisaged in those articles, as well as the cases or situations in which they would be submitted;

"(v) Additional measures aimed at increasing transparency in the work of the Security Council, particularly in respect of the plenary informal consultations of that organ, including the possibility of preparing summary records and other summaries of the discussions that take place and the decisions that are adopted in such a working mechanism of the Security Council;

"(b) To consider at its 1995 session those cases in which Chapter VII of the Charter has been invoked and to begin a study in which guidelines are proposed for the implementation of that Chapter, in the light of the various questions that lie within the mandate of the Council, and which discusses the scope and application of Article 25 of the Charter."

95. At the 22nd meeting of the Working Group, on 23 March, the sponsor introduced the revised working paper. She pointed out that the revised text pursued the same objectives as the previous version, while taking into account the adoption of General Assembly resolution 48/26. Moreover, the revised text presented the Committee with more concrete proposals.

96. The view was expressed that the revised working paper contained useful proposals that should be given due consideration by the Committee, thus complementing the work undertaken by the Working Group established under General Assembly resolution 48/26. In that connection, the point was made that some of the proposals contained in the revised working paper were not within the mandate of that Working Group and thus deserved consideration by the Committee. A question was raised as to the procedural relation between the said Working Group and the working group proposed in the revised working paper.

97. There was on the other hand a view that the Committee should concentrate its work on areas where general agreement was possible, and that the revised working paper did not provide the basis for such agreement. The point was made that absence of comments on the substance of the proposal did not imply support thereof.

D. Consideration of the working paper submitted by the Russian Federation entitled "New issues for consideration in the Special Committee"

98. At its 22nd meeting, on 23 March, the Working Group considered the working paper submitted by the Russian Federation entitled "New issues for consideration in the Special Committee" (A/AC.182/L.65/Rev.1), the text of which is reproduced in paragraph 95 of the report of the Committee on its 1993 session. 11/

99. The sponsor observed that the aim of the working paper was to indicate possible areas in which the Committee could undertake work in the future, in order to enhance the effectiveness of the United Nations. It was meant to raise issues, rather than to present elaborate proposals, a task which, he hoped, could be undertaken with the assistance of other delegations. The sponsor noted that the Committee had already undertaken work on some of those issues.

100. One delegation stated that some of the proposals contained in the working paper deserved further consideration, in particular those relating to Chapter VII of the Charter of the United Nations, and referred to a relevant proposal which her delegation had informally presented at the 1993 session of the Committee.

IV. PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES

Statement of the Rapporteur

101. In accordance with the decision taken by the Special Committee at its 183rd meeting pursuant to paragraph 3 (b) of General Assembly resolution 48/36, the question of the peaceful settlement of disputes between States was considered by the Working Group at its 17th to 23rd meetings, from 18 to 23 March 1994.

A. Consideration of the document containing the proposed United Nations Model Rules for the Conciliation of Disputes between States

102. In accordance with paragraph 3 (b) (i) of General Assembly resolution 48/36, and pursuant to paragraph 160 of the report of the Committee on its 1993 session, 11/ the Working Group had before it document A/AC.182/L.75/Rev.1, submitted by the delegation of Guatemala, to which was appended the text of the draft articles entitled "United Nations Model Rules for the Conciliation of Disputes between States" and the text of the draft resolution under the same title to which the draft articles were annexed. The document was a revised version of the proposal (A/AC.182/L.75) submitted by the delegation of Guatemala to the Committee at its 1993 session. It contained an explanatory memorandum in which the general considerations underlying the proposed draft articles were described and each provision was analysed in the light of the comments made at the previous session of the Committee.

103. The proposal submitted by Guatemala (A/AC.182/L.75/Rev.1) was considered by the Working Group at its 17th to 23rd meetings, from 18 to 23 March.

1. Introduction of the document by the sponsor

104. At its 17th meeting, the Working Group began its consideration of the revised version of the proposal submitted by Guatemala (A/AC.182/L.75/Rev.1).

105. The text of the proposal read as follows:

"United Nations Model Rules for the Conciliation of Disputes between States

"The General Assembly,

"Considering that conciliation is one of the methods of peaceful settlement of disputes between States that the United Nations Charter enumerates in its Article 33, paragraph 1, and that it has been adopted in numerous treaties, bilateral and multilateral, with a view to the settlement of such disputes,

"Convinced that the establishment of model rules of conciliation between States incorporating the results of the most recent scientific studies and experience in the field of international conciliation, together with certain innovations which can with advantage be made in the traditional practice in this field, could contribute to the development of harmonious relations between States,

"1. Recommends the application of the United Nations Model Rules for the Conciliation of Disputes between States, the text of which is contained in the annex to the present resolution, in any case where a dispute arises between States which it has not been possible to settle by direct negotiations and which the parties wish to settle by amicable means;

"2. Requests the Secretary-General to lend, as far as possible and in accordance with the relevant provisions of the Model Rules, his support to States resorting to conciliation on the basis of those Rules;

"3. Also requests the Secretary-General to take appropriate measures to circulate to all Governments the text of the present resolution, together with the annex thereto.

"Annex

"UNITED NATIONS MODEL RULES FOR THE CONCILIATION OF DISPUTES BETWEEN STATES

"CHAPTER I

"APPLICATION OF THE RULES

"Article 1

"1. These rules apply to the conciliation of disputes between States which it has not been possible to settle by direct negotiations, where those States have expressly agreed in writing to their application.

"2. The States applying these rules may at any time agree to exclude or amend any of their provisions.

"CHAPTER II

"INITIATION OF THE CONCILIATION PROCEEDINGS

"Article 2

"1. The conciliation proceedings shall begin as soon as possible after the States concerned have agreed in writing to the application of the present rules, with or without amendments, as well as on a definition of the subject of the dispute, the number of members of the conciliation commission, its seat and the maximum duration of the proceedings, as provided in article 24. If necessary, the agreement shall contain provisions concerning the language or languages in which the proceedings are to be conducted and the linguistic services required.

"2. If the States cannot reach agreement on the definition of the dispute, they may jointly request the assistance of the Secretary-General of the United Nations to resolve the difficulty. They may also request his assistance to resolve any other difficulty they may encounter in reaching an agreement on the modalities of the conciliation proceedings.

"CHAPTER III

"NUMBER OF CONCILIATORS

"Article 3

"There may be three conciliators or five conciliators. In either case the conciliators shall form a commission.

"CHAPTER IV

"APPOINTMENT OF CONCILIATORS

"Article 4

"If the parties have agreed that three conciliators shall be appointed, each one of them shall appoint a conciliator, who may not be of its own nationality. The parties shall appoint by mutual agreement the third conciliator, who may not be of the nationality of any of the parties or of the other conciliators. The third conciliator shall act as president of the commission. If he is not appointed within two months of the appointment of the conciliators appointed individually by the parties, the third conciliator shall be appointed by the Government of a third State chosen by agreement between the parties or, if such agreement is not obtained within two months, by the President of the International Court of Justice. If the President is a national of one of the parties, the appointment shall be made by the Vice-President or the next member of the Court in order of seniority who is not a national of the parties. The third conciliator shall not reside habitually in the territory of the parties or be or have been in their service.

"Article 5

"1. If the parties have agreed that five conciliators should be appointed, each one of them shall appoint a conciliator who may be of its own nationality. The other three conciliators, one of whom shall be chosen with a view to his acting as president, shall be appointed by agreement between the parties from among nationals of third States and shall be of different nationalities. None of them shall reside habitually in the territory of the parties or be or have been in their service. None of them shall have the same nationality as that of the other two conciliators.

"2. If the appointment of the conciliators whom the parties are to appoint jointly has not been effected within three months, they shall be appointed by the Government of a third State chosen by agreement between the parties or, if such an agreement is not reached within three months, by the President of the International Court of Justice. If the President is a national of one of the parties, the appointment shall be made by the Vice-President or the next judge in order of seniority who is not a national of the parties. The Government or member of the International Court of Justice making the appointment shall also decide which of the three conciliators shall act as president.

"3. If at the end of the three-month period referred to in the preceding paragraph, the parties have been able to appoint only one or two

conciliators, the two conciliators or the conciliator still required shall be appointed in the manner described in the preceding paragraph. If the parties have not agreed that the conciliator or one of the two conciliators whom they have appointed shall act as president, the Government or member of the International Court of Justice appointing the two conciliators or the conciliator still required shall also decide which of the three conciliators shall act as president.

"4. If, at the end of the three-month period referred to in paragraph 2 of this article the parties have appointed three conciliators but have not been able to agree which of them shall act as president, the president shall be chosen in the manner described in that paragraph.

"Article 6

"The vacancies which may occur in the commission as a result of death, resignation or any other cause shall be filled as soon as possible by the method established for appointing the members to be replaced.

"CHAPTER V

"FUNDAMENTAL PRINCIPLES

"Article 7

"The commission, acting independently and impartially, shall endeavour to assist the parties in reaching an amicable settlement of the dispute. To that end, it shall attempt to clarify the issues in dispute and seek to obtain all information necessary or useful for the attainment of those objectives. If no settlement is reached during consideration of the dispute, the commission shall draw up and communicate to the parties such terms of settlement as it deems appropriate.

"Article 8

"The commission shall be guided by principles of objectivity, equity and justice, giving consideration to, among other things, the rights and obligations of the parties and the facts and circumstances of the case.

"CHAPTER VI

"PROCEDURES AND POWERS OF THE COMMISSION

"Article 9

"While adhering to all the provisions of these rules, the commission shall adopt its procedure.

"Article 10

"1. Before the commission begins its work, the parties shall designate the agents and shall communicate the names of such agents to the president of the commission. The president shall determine, in agreement with the parties, the date of the commission's first meeting, to which the members of the commission and the agents shall be convoked.

"2. The agents of the parties may be assisted by counsel and experts appointed by the parties.

"3. Before the first meeting of the commission, its members may meet informally with the agents of the parties to deal with administrative and procedural matters.

"Article 11

"1. At its first meeting, the commission shall appoint a secretary, adopt its procedural rules and hear initial statements by the parties. As soon as the information provided by the parties so permits, the commission, having regard, in particular, to the time-limit laid down in article 24, shall decide whether the parties should be invited to submit written pleadings and in what order and within what time-limits they are to be submitted, as well as the dates when, if necessary, the agents and counsel will be heard. The decisions taken by the commission in this regard may be amended at any later stage of the proceedings.

"2. The secretary of the commission shall not have the nationality of any of the parties, shall not reside habitually in their territory and shall not be or have been in the service of any of them. He may be a United Nations official if the parties so wish and if they agree with the Secretary-General of the Organization on the conditions under which he will exercise his functions.

"3. Subject to the provisions of article 20, paragraph 1, the commission shall not allow the agent or counsel of one party to attend a meeting without having also given the other party the opportunity to be represented at the same meeting.

"Article 12

"The parties, acting in good faith, shall facilitate the commission's work and, in particular, shall do everything possible to provide it with whatever documents, information and explanations may be relevant.

"Article 13

"1. The commission may ask the parties for whatever relevant information or documents, as well as explanations, it deems necessary or useful. It may also make comments on the arguments advanced as well as the statements or proposals made by the parties.

"2. The commission shall accede to any request by a party that persons whose testimony it considers necessary or useful be heard, that experts be

consulted or that local investigations be conducted. It may, however, in any case in which it considers it neither necessary nor useful to accede to such a request, ask the party making the request to reconsider it.

"Article 14

"1. If the commission ascertains that the parties disagree on issues of fact, it may, motu proprio, consult experts, conduct local investigations or question witnesses.

"2. The parties shall use the means available to them to enable the commission to enter their territory and, in accordance with their laws, convoke and hear witnesses or experts and visit any part of their territory to conduct local investigations.

"3. The members of the commission, the agents of the parties and the secretary, when engaged on the business of the commission, shall enjoy diplomatic privileges and immunities.

"Article 15

"The commission may propose to the parties that they jointly appoint expert advisers to assist it in the consideration of technical aspects of the dispute. If the proposal is accepted, its implementation shall be conditional upon the expert advisers being appointed by the parties by mutual agreement and accepted by the commission and upon the parties fixing their emoluments.

"Article 16

"Each party may at any time, at its own initiative or at the initiative of the commission, make proposals for the settlement of the dispute. Any proposal made in accordance with this article shall be communicated immediately to the other party by the president, who may, in so doing, transmit any comment the commission may wish to make thereon.

"Article 17

"At any stage of the proceedings, the commission may, at its own initiative or at the initiative of one of the parties, draw the attention of the parties to any measures which in its opinion might be advisable or facilitate a settlement.

"Article 18

"The commission shall endeavour to take its decisions unanimously but, if unanimity proves impossible, it may take them by a majority of votes of its members. Except in matters of procedure, the presence of all members shall be required in order for a decision to be valid.

"Article 19

"The commission may, at any time, ask the Secretary-General of the United Nations for advice or assistance with regard to the administrative or procedural aspects of its work.

"CHAPTER VII

"CONCLUSION OF THE CONCILIATION PROCEEDINGS

"Article 20

"1. On concluding its consideration of the dispute, the commission shall, if full settlement has not been reached, define the terms of settlement which in its opinion are likely to be acceptable to the parties. To that end, it may hold an exchange of views with the agents of the parties, who may be heard jointly or separately.

"2. The terms of settlement adopted by the commission shall be set forth in a report communicated by the president of the commission to the agents of the parties, with a request that the agents inform the commission, within a given period, whether the parties accept them. The president may include in the report the reasons which, in the commission's view, might prompt the parties to accept the proposed terms of settlement. The commission shall refrain from presenting in its report any final conclusions with regard to facts or ruling formally on issues of law, unless the parties have jointly asked it to do so.

"3. If the parties accept the terms of settlement proposed by the commission, a procès-verbal shall be drawn up setting forth the conditions of acceptance. The procès-verbal shall be signed by the president and the secretary. A copy signed by the secretary shall be provided to each party. This shall conclude the proceedings.

"Article 21

"The terms of settlement proposed shall be merely recommendations submitted to the parties for consideration in order to facilitate an amicable settlement of the dispute. The parties nevertheless undertake to study them in good faith, carefully and objectively. If one of the parties rejects terms of settlement which the other party accepts, it shall inform the latter, in writing, of the reasons why it could not accept them.

"Article 22

"1. If the terms of settlement are not accepted by both parties and the latter do not wish further efforts to be made to reach agreement on different terms, a procès-verbal signed by the president and the secretary of the commission shall be drawn up, omitting the proposed terms and indicating that the parties were unable to accept them and do not wish further efforts to be made to reach agreement on different terms. The proceedings shall be concluded when each party has received a copy of the procès-verbal signed by the secretary.

"2. If the terms of settlement are not accepted by both parties but the latter wish efforts to reach agreement on different terms to continue, the proceedings shall be resumed, with all the provisions that have thus far governed the proceedings continuing to apply, except that it shall not be necessary to appoint a new secretary. Article 24 shall apply to the resumed proceedings, with the relevant time-limit, which the parties may, by mutual agreement, shorten or extend, running from the commission's first meeting after resumption of the proceedings.

"Article 23

"Upon conclusion of the proceedings, the president of the commission shall deliver the documents in the possession of the secretariat of the commission to the Secretary-General of the United Nations, who, without prejudice to the possible application of article 26, paragraph 2, shall preserve their secrecy.

"Article 24

"Except where the parties or the commission, with the consent of the parties, decide on an extension, the commission shall conclude its work within ..... from the date of its first meeting.

"CHAPTER VIII

"SECRECY OF THE COMMISSION'S WORK AND DOCUMENTS

"Article 25

"1. The commission's meetings shall be closed. Its members and expert advisers, the agents and counsel of the parties, and the secretary and secretariat staff, shall refrain from divulging any documents or statements, or any communication concerning the progress of the proceedings, without the prior approval of both agents.

"2. Each party shall receive, through the secretary, certified copies of the minutes of the meetings at which it was represented.

"3. Each party shall receive, through the secretary, certified copies of any documentary evidence received and of experts' reports, records of investigations and statements by witnesses.

"4. If any indiscretion occurs during the proceedings, the commission may determine its possible effect on their continuation.

"Article 26

"1. Except with regard to the certified copies referred to in article 25, paragraph 3, the obligation to respect the secrecy of the proceedings and of the deliberations shall remain in effect for the parties and for members of the commission, expert advisers and secretariat staff after the proceedings are concluded and shall extend to terms of settlement and proposals which were not accepted.

"2. Notwithstanding the foregoing, the parties may, upon conclusion of the proceedings and by mutual agreement, make available to the public all or some of the documents that in accordance with the preceding paragraph are to remain secret, or authorize the publication of all or some of those documents.

"CHAPTER IX

"PROHIBITION OF ACTS WHICH MIGHT HAVE AN ADVERSE EFFECT ON THE CONCILIATION

"Article 27

"The parties shall refrain from any measure which might aggravate or exacerbate the dispute. They shall, in particular, refrain from any measures which might have an adverse effect on the terms of settlement proposed by the commission, so long as those terms have not been explicitly rejected by both or one of the parties.

"CHAPTER X

"PRESERVATION OF THE LEGAL POSITION OF THE PARTIES

"Article 28

"1. Except as the parties may otherwise agree, neither party shall be entitled in any other proceedings, whether in a court of law or before arbitrators or before any other body, entity or person, to invoke any views expressed or statements, admissions or proposals made by the other party in the conciliation proceedings, but not accepted, or the report of the commission, the terms of settlement approved by the commission or any proposal made by the commission, unless accepted by both parties.

"2. Acceptance by a party of terms of settlement proposed by the commission does not in any way imply agreement with the considerations upon which they may be based.

"CHAPTER XI

"COSTS

"Article 29

"The costs of the conciliation proceedings, including those occasioned by any investigations which the commission decided to conduct motu proprio and the emoluments of expert advisers appointed in accordance with article 15, shall be borne by the parties in equal shares."

106. In introducing the document, the sponsor observed that it contained the final version of the proposal submitted by Guatemala which the Committee had considered at its 1992 and 1993 sessions. He also noted that the final version of the proposal included the word "model" in the title and took into account the comments made in the Committee at its 1993 session. The sponsor emphasized the flexibility of the proposed Model Rules, indicating that they were based on the

consent of the parties to a dispute, and that States parties to a dispute were free to use them or to amend them, as appropriate. He highlighted the usefulness of having within the United Nations a set of such model rules, available for States, which could facilitate and simplify a conciliation procedure. The sponsor also expressed the view that the proposed Model Rules could fill a gap in the rules of international law, since the majority of multilateral treaties did not have detailed provisions on conciliation rules and procedures. The sponsor further pointed out that such model rules for conciliation, intended for adoption by the General Assembly of the United Nations, were largely inspired by the conciliation rules adopted on 11 September 1961 by the Institute of International Law, 12/ and contained useful innovations. They could indeed become an effective tool at the disposal of States for settling political and legal disputes between them by peaceful means.

2. Consideration of the document

107. At its 17th to 23rd meetings, the Working Group considered the text of the proposed Model Rules, on an article-by-article basis. The text of the articles as it emerged from the first reading is set out below:

"UNITED NATIONS MODEL RULES FOR THE CONCILIATION OF DISPUTES BETWEEN STATES

"CHAPTER I

"APPLICATION OF THE RULES

"Article 1

"1. These rules may apply to the conciliation of disputes between States where those States have expressly agreed in writing to their application.

"2. The States which agree to apply these rules may at any time, through mutual agreement, exclude or amend any of their provisions.

"CHAPTER II

"[PREPARATION AND] INITIATION OF THE CONCILIATION PROCEEDINGS

"Article 2

"1. The conciliation proceedings shall begin as soon as the States concerned (henceforth: the parties) have agreed in writing to the application of the present rules, with or without amendments, as well as on a definition of the subject of the dispute, the number of members of the conciliation commission, its seat and the maximum duration of the proceedings, as provided in article 24. If necessary, the agreement shall contain provisions concerning the language or languages in which the proceedings are to be conducted and the linguistic services required.

"[2. If the States cannot reach agreement on the definition of the subject of the dispute, they may jointly request the assistance of the Secretary-

General of the United Nations by means of his good offices to resolve the difficulty. They may also jointly request his assistance to resolve any other difficulty that they may encounter in reaching an agreement on the modalities of the conciliation proceedings.]

"CHAPTER III

"COMPOSITION OF THE CONCILIATION COMMISSION

"Article 3

"There may be three conciliators or five conciliators. In either case the conciliators shall form a commission.

"Article 4

"[If the parties have agreed that three conciliators shall be appointed, each one of them shall appoint a conciliator, who may not be of its own nationality. The parties shall appoint by mutual agreement the third conciliator, who may not be of the nationality of any of the parties or of the other conciliators. The third conciliator shall act as president of the commission. If he is not appointed within two months of the appointment of the conciliators appointed individually by the parties, the third conciliator shall be appointed by the Government of a third State chosen by agreement between the parties or, if such agreement is not obtained within two months, by the President of the International Court of Justice. If the President is a national of one of the parties, the appointment shall be made by the Vice-President or the next member of the Court in order of seniority who is not a national of the parties. The third conciliator shall not reside habitually in the territory of the parties or be or have been in their service.]

"Article 5

"1. If the parties have agreed that five conciliators should be appointed, each one of them shall appoint a conciliator who may be of its own nationality. The other three conciliators, one of whom shall be chosen with a view to his acting as president, shall be appointed by agreement between the parties from among nationals of third States and shall be of different nationalities. None of them shall reside habitually in the territory of the parties or be or have been in their service. None of them shall have the same nationality as that of the other two conciliators.

"[2. If the appointment of the conciliators whom the parties are to appoint jointly has not been effected within three months, they shall be appointed by the Government of a third State chosen by agreement between the parties or, if such an agreement is not reached within three months, by the President of the International Court of Justice. If the President is a national of one of the parties, the appointment shall be made by the Vice-President or the next judge in order of seniority who is not a national of the parties. The Government or member of the International Court of Justice making the appointment shall also decide which of the three conciliators shall act as president.

"3. If, at the end of the three-month period referred to in the preceding paragraph, the parties have been able to appoint only one or two conciliators, the two conciliators or the conciliator still required shall be appointed in the manner described in the preceding paragraph. If the parties have not agreed that the conciliator or one of the two conciliators whom they have appointed shall act as president, the Government or member of the International Court of Justice appointing the two conciliators or the conciliator still required shall also decide which of the three conciliators shall act as president.

"4. If, at the end of the three-month period referred to in paragraph 2 of this article, the parties have appointed three conciliators but have not been able to agree which of them shall act as president, the president shall be chosen in the manner described in that paragraph.]

"Article 6

"Vacancies which may occur in the commission as a result of death, resignation or any other cause shall be filled as soon as possible by the method established for appointing the members to be replaced.

"CHAPTER IV

"FUNDAMENTAL PRINCIPLES

"Article 7

"[The commission, acting independently and impartially, shall endeavour to assist the parties in reaching an amicable settlement of the dispute. If no settlement is reached during the consideration of the dispute, the commission may draw up and propose to the parties appropriate recommendations for the consideration of the parties.] 13/

"Article 8

"[The commission shall work objectively and shall be guided by the principles of international law and justice, giving especial consideration to the rights and obligations of the parties, and the facts and circumstances of the case.

"The commission shall, where appropriate to its work, apply the principles of equity.] 14/

"CHAPTER V

"[PROCEDURES AND POWERS OF THE COMMISSION]

"Article 9

"The commission may adopt its procedure.

"Article 10

"1. Before the commission begins its work, the parties shall designate their agents and shall communicate the names of such agents to the president of the commission. The president shall determine, in agreement with the parties, the date of the commission's first meeting, to which the members of the commission and the agents shall be invited.

"2. The agents of the parties may be assisted before the commission by counsel and experts appointed by the parties.

"3. Before the first meeting of the commission, its members may meet informally with the agents of the parties, if necessary, accompanied by the appointed counsel and experts to deal with the administrative and procedural matters.

"Article 11

"1. At its first meeting, the commission shall appoint a secretary, adopt its procedural rules and hear initial statements by the parties.

"[2. The secretary of the commission shall not have the nationality of any of the parties, shall not reside habitually in their territory and shall not be or have been in the service of any of them. He may be a United Nations official if the parties agree with the Secretary-General on the conditions under which the official will exercise these functions.] 15/

"3. As soon as the information provided by the parties so permits, the commission, having regard, in particular, to the time-limit laid down in article 24, shall decide in consultation with the parties concerned whether the parties should be invited to submit written pleadings and, if so, in what order and within what time-limits, as well as the dates when, if necessary, the agents and counsel will be heard. The decisions taken by the commission in this regard may be amended at any later stage of the proceedings.

"4. Subject to the provision of article 20, paragraph 1, the commission shall not allow the agent or counsel of one party to attend a meeting without having also given the other party the opportunity to be represented at the same meeting.

"Article 12

"The parties, acting in good faith, shall facilitate the commission's work and, in particular, shall try to provide it with whatever documents, information and explanations may be relevant.

"Article 13

"1. The commission may ask the parties for whatever relevant information or documents, as well as explanations, it deems necessary or useful. It may also make comments on the arguments advanced as well as the statements or proposals made by the parties.

"2. The commission may accede to any request by a party that persons whose testimony it considers necessary or useful be heard, or that experts be consulted [or that local investigations be conducted]. It may, however, in any case in which it considers it neither necessary nor useful to accede to such a request, ask the party making the request to reconsider it.

"Article 14

"1. If the commission ascertains that the parties disagree on issues of fact, it may, motu proprio, consult experts, conduct [local investigations] or question witnesses.

"[2. In cases where the parties disagree on issues of fact, the commission may use all means at its disposal, such as the joint expert advisers mentioned in article 15, or consultation with experts, to ascertain the facts.]

"3. The members of the commission, the agents of the parties and the secretary, when engaged on the business of the commission, should enjoy diplomatic privileges and immunities.

"Article 15

"The commission may propose to the parties that they jointly appoint expert advisers to assist it in the consideration of technical aspects of the dispute. If the proposal is accepted, its implementation shall be conditional upon the expert advisers being appointed by the parties by mutual agreement and accepted by the commission and upon the parties fixing their emoluments.

"Article 16

"Each party may at any time, at its own initiative or at the initiative of the commission, make proposals for the settlement of the dispute. Any proposal made in accordance with this article shall be communicated immediately to the other party by the president, who may, in so doing, transmit any comment the commission may wish to make thereon.

"Article 17

"At any stage of the proceedings, the commission may, at its own initiative or at the initiative of one of the parties, draw the attention of the parties to any measures which in its opinion might be advisable or facilitate a settlement.

"Article 18

"The commission shall endeavour to take its decisions unanimously but, if unanimity proves impossible, it may take them by a majority of votes of its members. Abstentions are not allowed. Except in matters of procedure, the presence of all members shall be required in order for a decision to be valid.

"Article 19

"The commission may, at any time, ask the Secretary-General of the United Nations for advice or assistance with regard to the administrative or procedural aspects of its work.

"CHAPTER VI

"CONCLUSION OF THE CONCILIATION PROCEEDINGS

"Article 20

"1. On concluding its consideration of the dispute, the commission may, if full settlement has not been reached, draw up and propose to the parties appropriate recommendations for the consideration of the parties. To that end, it may hold an exchange of views with the agents of the parties, who may be heard jointly or separately.

"2. The recommendations of settlement adopted by the commission shall be set forth in a report communicated by the president of the commission to the agents of the parties, with a request that the agents inform the commission, within a given period, whether the parties accept them. The president may include in the report the reasons which, in the commission's view, might prompt the parties to accept the proposed recommendations. The commission shall refrain from presenting in its report any final conclusions with regard to facts or ruling formally in issues of law, unless the parties have jointly asked it to do so.

"3. If the parties accept the recommendations proposed by the commission, a procès-verbal shall be drawn up setting forth the conditions of acceptance. The procès-verbal shall be signed by the president and the secretary. A copy signed by the secretary shall be provided to each party. This shall conclude the proceedings.

"Article 21

"The proposed recommendations will be submitted to the parties for consideration in order to facilitate an amicable settlement of the dispute. The parties nevertheless undertake to study them in good faith, carefully and objectively. If one of the parties does not accept the recommendations which the other party accepts, it shall inform the latter, in writing, of the reasons why it could not accept them.

"Article 22

"1. If the terms of settlement are not accepted by both parties but the latter wish efforts to continue in order to reach agreement on different terms, the proceedings shall be resumed. Article 24 shall apply to the resumed proceedings, with the relevant time-limit, which the parties may, by mutual agreement, shorten or extend, running from the commission's first meeting after resumption of the proceedings.

"2. If the terms of settlement are not accepted by both parties and the latter do not wish further efforts to be made to reach agreement on

different terms, a procès-verbal signed by the president and the secretary of the commission shall be drawn up, omitting the proposed terms and indicating that the parties were unable to accept them and do not wish further efforts to be made to reach agreement on different terms. The proceedings shall be concluded when each party has received a copy of the procès-verbal signed by the secretary.

"Article 23

"[Upon conclusion of the proceedings, the president of the commission shall deliver the documents in the possession of the secretariat of the commission to the Secretary-General of the United Nations, who, without prejudice to the possible application of article 26, paragraph 2, shall preserve their secrecy.]

"Article 24

"Except where the parties decide on an extension, the commission shall conclude its work within an agreed period.

"CHAPTER VII

"CONFIDENTIALITY OF THE COMMISSION'S WORK AND DOCUMENTS

"Article 25

"1. The commission's meetings shall be closed. Its members and expert advisers, the agents and counsel of the parties, and the secretary and the secretariat staff, shall maintain the confidentiality of any documents or statements, or any communication concerning the progress of the proceedings, without the prior approval of both agents.

"2. Each party shall receive, through the secretary, certified copies of any minutes of the meetings at which it was represented.

"3. Each party shall receive, through the secretary, certified copies of any documentary evidence received and of experts' reports, records of investigations and statements by witnesses.

"3 bis. The classified documents referred to above communicated to the parties will be kept confidential.

"4. Should one of these classified certified documents be made public during the proceedings without the permission of the parties, the commission should consider what effect this may have on its work.

"Article 26

"1. Except with regard to the use of certified copies referred to in article 25, paragraph 3, as evidence in any subsequent legal proceedings, the obligation to respect the confidentiality of the proceedings and of the deliberations shall remain in effect for the parties and for members of the commission, expert advisers and secretariat staff after the proceedings are

concluded and shall extend to terms of settlement and proposals which were not accepted.

"2. Notwithstanding the foregoing, the parties may, upon conclusion of the proceedings and by mutual agreement, make available to the public all or some of the documents that in accordance with the preceding paragraph are to remain confidential, or authorize the publication of all or some of those documents.

"CHAPTER VIII

"OBLIGATION NOT TO ACT IN A MANNER WHICH MIGHT HAVE AN ADVERSE EFFECT ON THE CONCILIATION

"Article 27

"The parties shall refrain during the conciliation proceedings from any measure which might aggravate or widen the dispute. They shall, in particular, refrain from any measures which might have an adverse effect on the terms of settlement proposed by the commission, especially where those terms have not been explicitly rejected by either of the parties.

"CHAPTER IX

"PRESERVATION OF THE LEGAL POSITION OF THE PARTIES

"Article 28

"1. Except as the parties may otherwise agree, neither party shall be entitled in any other proceedings, whether in a court of law or before arbitrators or before any other body, entity or person, to invoke any views expressed or statements, admissions or proposals made by the other party in the conciliation proceedings, but not accepted, or the report of the commission, the terms of settlement approved by the commission or any proposal made by the commission, unless agreed to by both parties.

"2. Acceptance by a party of terms of settlement proposed by the commission in no way implies any admission by it of the considerations of law or of fact which may have inspired the terms of settlement.

"CHAPTER X

"COSTS

"Article 29

"[The costs of the conciliation proceedings, including those occasioned by any investigations which the commission decided to conduct motu proprio and the emoluments of expert advisers appointed in accordance with article 15, shall be borne by the parties in equal shares.]"

108. The Committee intends to continue its consideration of the proposed Model Rules at its next session. An informal summary of the discussion of the revised version of the proposal submitted by Guatemala (A/AC.182/L.75/Rev.1) during the 1994 session will be available when the Committee takes up the matter during its 1995 session, or earlier.

B. Consideration of the proposal submitted by Sierra Leone entitled "Establishment of a Dispute Settlement Service offering or responding with its services early in disputes"

109. At its 22nd meeting, on 23 March, the Working Group considered the proposal submitted by Sierra Leone (see A/48/398, annex), which read as follows:

"Establishment of a Dispute Settlement Service offering or responding with its services early in disputes

"1. The Dispute Settlement Service shall be implemented through a board of five Administrators, with five alternates, elected by the Sixth Committee and confirmed by the General Assembly, on the basis of equitable geographical distribution, for a term of three years. The Administrators shall be eligible for re-election.

"2. The Secretary-General, or his representative, shall have a seat on the Board of Administrators, but without the right to vote. In this capacity, the Secretary-General, or his representative, will place his expertise at the disposal of the Board and, in order to avoid conflict, will keep the Board informed of the existence of such matters as referred to in Article 12, paragraph 2, of the Charter of the United Nations.

"3. The Chairman of the Board of Administrators shall be chosen by the Administrators.

"4. The Board of Administrators shall be located in New York. Secretarial services for the Board shall be provided by the Secretariat, bearing in mind the nature of the Board. 16/

"5. The Dispute Settlement Service may be activated directly by a simple majority of the Board of Administrators in their offering of services early in disputes, subject to paragraphs 6 and 7, unless opposed by the Administrator from the region in which the disputing parties are involved.

"6. The activities of the Service cannot be invoked to prevent the Security Council from exercising its powers under the Charter in any dispute or situation likely to endanger international peace and security.

"7. The offering of services by the Dispute Settlement Service may be prevented by the Security Council under Article 27, paragraph 2, of the Charter.

"8. The Service may be activated by a decision of the Security Council. It may also be activated at the request of the General Assembly, as well as on the recommendation of the Secretary-General, subject to paragraphs 6 and 7.

"9. If any of the parties to the dispute rejects the initial offer of services, or does so at a later stage, the procedure is terminated. A rejection would not prevent a later attempt to offer services at a more favourable time.

"10. The Service may be activated at the request of all parties to a given dispute, subject to paragraphs 6 and 7.

"11. No offer of services shall be made to parties in dispute if a preceding effort to settle such a dispute is already being implemented by an activity established for that purpose, unless the parties request aid from or transfer responsibility to the Service.

"12. After a decision is made to activate the Service, the Chairman, or other designated Administrator, shall contact the parties in the offer of services under strict confidentiality. If the parties so desire, no party shall be identified as accepting or rejecting the services, except in confidence to the other Administrators, the Secretary-General, in accordance with paragraph 2, or by the request of the Security Council.

"13. After a rejection of the initial offer of services or the later abandoning of the process by any party at a later stage, the Chairman shall issue a report that the services cannot be implemented owing to unfavourable conditions at the time. Only the Security Council, for its own confidential information concerning the rejection, and likewise the Secretary-General, for his own function of offering services independent of this Service, shall receive any supplementary information on request.

"14. If the offer of services is accepted by all parties to the dispute, the parties will select an agreed number of settlors from the Roster of Settlors.

"15. The Roster of Settlors shall be composed of qualified individuals willing to serve in dispute settlement nominated by Member States. No more than three settlors may be nominated by each Member State. Nothing in this Service shall disqualify any of the Administrators or the Secretary-General from acting in the capacity of a settlor if so desired by the disputing parties.

"16. The Roster of Settlors shall be maintained and updated by the Office of Legal Affairs and shall be made available to all Member States and any disputing parties.

"17. After accepting the services, the parties shall bear all costs of subsequent dispute settlement sessions. 17/

"18. Operating procedures, including venue, number, and timing of sessions, shall be established by the parties to the dispute and the settlors. Any interim report or that of the final dispute decision shall be released to the Board of Administrators by the settlors, as determined by the parties. Any other procedural regulations inconsistent with this mandate of the Service shall not apply.

"19. The Board of Administrators shall make an annual report to the General Assembly on the activities of the Service.

"20. The Secretary-General maintains his option of offering his good offices in the settlement of disputes independent of his role in the operation of this Service. Also, all other options using existing United Nations machinery and procedures intended for enhancing the peaceful settlement of disputes remain available independent of this Service.

"21. For purposes of early warning, the Administrators are encouraged to draw upon the resources of the Secretariat and their respective regions regarding new and potential disputes in which this Service may be crucial.

"22. In order to encourage the use of this Service, the Secretariat shall disseminate information regarding it to all Member States and on as wide a geographical basis as possible."

110. In introducing the proposal, the sponsor observed that it should be viewed as an effort towards the fuller utilization of the potential of the Charter in the area of the peaceful settlement and prevention of disputes, in the light of present-day realities. The proposal envisaged the establishment of a mechanism, within the framework of the United Nations, which States could use for the peaceful settlement of their disputes. He explained that the structure of the proposed dispute settlement service consisted, on the one hand, of a Board of Administrators, and on the other hand of a roster of settlors, who would lend their expertise to the parties to a dispute. The sponsor further noted that the proposal highlighted the important role of the General Assembly, in accordance with Article 14 of the Charter, as well as that of the Secretary-General, in the peaceful settlement of disputes between States. He expressed the hope that the proposal would be considered in more detail at the next session of the Committee.

111. The proposal was generally welcomed by delegations who commented on it as a good basis for the future work of the Committee in the area of the peaceful settlement of disputes between States. The point was made that it was particularly timely within the context of the United Nations Decade of International Law. While the view was expressed that the proposal should be given priority consideration at the next session of the Committee, the point was also made that account should be taken of the fact that other issues had already been given priority in the mandate of the Committee.

V. COMMUNICATION ADDRESSED TO THE CHAIRMAN ON ISSUES BEARING UPON THE WORK OF THE COMMITTEE

Statement of the Rapporteur

United Nations Decade of International Law

112. At the 195th meeting, on 24 March 1994, the Chairman informed the Special Committee of a letter dated 8 March 1994 he had received from the Under-Secretary-General for Legal Affairs, the Legal Counsel, drawing his attention to General Assembly resolution 48/30 of 9 December 1993, and to certain paragraphs of the programme for the activities for the second term (1993-1994) of the United Nations Decade of International Law which related to the mandate of the Committee.

113. The Chairman informed the Committee of his intention to respond to the letter by pointing out the concrete contributions made by the Committee at its 1994 session, in particular the adoption of the draft declaration on the enhancement of cooperation between the United Nations and regional arrangements or agencies in the maintenance of international peace and security, as well as the progress made on other items in the Committee's mandate in the area of the maintenance of international peace and security and the peaceful settlement of disputes.

Notes

1/ For the list of members of the Committee at its 1994 session, see A/AC.182/INF/19.

2/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 33 (A/36/33), para. 7.

3/ Ibid., Forty-eighth Session, Supplement No. 33 and corrigendum (A/48/33 and Corr.1), para. 95.

4/ Ibid., para. 93.

5/ Ibid., para. 90.

6/ General Assembly resolution 2625 (XXV), annex.

7/ General Assembly resolution 37/10, annex.

8/ General Assembly resolution 42/22, annex

9/ General Assembly resolution 43/51, annex.

10/ General Assembly resolution 46/59, annex.

11/ Official Records of the General Assembly, Forty-eighth Session, Supplement No. 33 and corrigendum (A/48/33 and Corr.1).

12/ See Annuaire de l'Institut de droit international, vol. 49, Part II (1961), pp. 385-391.

13/ One delegation proposed the following formulation for the last sentence of the article:

"If no settlement is reached during the consideration of the dispute, the commission shall on the request of both parties concerned draw up and communicate to the parties such terms of settlement as it deems appropriate."

14/ An objection was raised concerning the inclusion of such an article in the present draft model rules.

15/ An objection was raised concerning the inclusion of the last sentence of this paragraph.

16/ It is anticipated that such secretarial services will be drawn from the Office of Legal Affairs.

17/ The fund established by the Secretary-General for parties appearing before the International Court of Justice may, if considered appropriate, be put at the disposal of parties in dispute experiencing financial difficulties.